

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

USG INTERIORS, INC.

Employer

and

GENERAL DRIVERS UNION LOCAL
#346, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

Case 18-RC-16493

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹ The Employer filed a number of special appeals concerning rulings that limited the Employer's presentation of evidence, which nevertheless consumed 14 days on the record and 2457 pages of transcript. These evidentiary issues are described in more detail in the context of the issues concerning which they arise.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization³ involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit of “all production, maintenance and warehouse employees including millwrights, electricians, janitors, operators, mechanics, material handlers, laborers, quality inspectors, loaders and lift truck operators employed by USG Interiors at its Cloquet facility [excluding] all office clerical employees,

² The Employer, USG Interiors, Inc., is a Delaware corporation engaged in the production of ceiling panels at facilities including one in Cloquet, Minnesota. During the past 12 months, a representative period, the Employer earned gross revenues in excess of \$500,000 and sold goods valued in excess of \$50,000 directly to customers located outside the State of Minnesota.

³ The Employer contests labor organization status on a procedural ground and a substantive ground. Procedurally, the Employer subpoenaed all of Petitioner’s collective bargaining agreements. The hearing officer granted Petitioner’s motion to quash, without specifically stating a ground. Petitioner’s secretary-treasurer, Clarence LaBorde, testified that Petitioner had contracts with other employers, and he named several in the Cloquet area. On brief, the Employer argues that the testimony makes all the collective bargaining agreements relevant. I find that labor organization status is demonstrated by the existence of collective bargaining agreements, and it is not necessary to examine the complete contents of every single one of them.

Substantively, the Employer challenges labor organization status based on the names Petitioner professed to operate under. The petition says Teamsters Local 346. At the hearing, Petitioner asked to amend the petition to name itself General Drivers Union Local 346, a/w International Brotherhood of Teamsters. When LaBorde took the stand, he identified himself as Secretary/Treasurer of “General Drivers Number 346, a/w Helpers and Inside Employees and also with the IBT International Union.” The Employer argues on brief that labor organization status was not established because the Petitioner answers to three different names. It cites no authority for why that should make a difference. The Employer also argues, again without citation of authority, that the lack of affiliation stated on the face of the petition is fatal. I conclude that neither circumstance affects Petitioner’s status within the meaning of Section 2(5) of the Act.

salespersons, professional employees, guards, and supervisors as defined in the Act.”

The Employer raised a number of issues, proposing inclusion of the employees at another plant in Greenville, Mississippi, exclusion of one entire production line in Cloquet and other specific classifications on community of interest grounds, exclusion of certain alleged technical employees, and exclusion of “relief supervisors.”

The Employer manufactures a variety of ceiling tiles that differ in color, size, sound absorption characteristics, and surface texture. All the products start with one of two basic “boards,” or substrates, Auratone or Constellation. The Employer operates three separate production lines. Both the Commodity and Specialty lines begin by producing Auratone board from a wet mixture (described in the record as “wet oatmeal”) of perlite (which looks like fine white sand), waste newspaper, starch, gypsum, and mineral wool. Constellation board also starts with a “wet oatmeal” slurry including mineral wool, latex, and starch.

The Commodity line basically ends after trimming the boards down to 2x4 foot panels. Some of this “plain” board is sold as finished product, in fact the best-selling single product of the facility. The Specialty line continues after formation of basic Auratone through a number of special finishing operations, including trimming to smaller than the standard size, various coatings and paints, and various laminations. The Constellation line produces primarily a single coated board renowned for its sound absorption characteristics. This is the second best-selling product out of this facility. A small fraction (1 to 2 percent) of the Constellation board is further laminated or coated in

a Specialty off-line operation. Depending on demand for a specific product, each production line or off-line operation can run up to 24 hours a day, seven days a week.

Each of the three production lines is divided into two areas, the wet end and the dry end. The wet end includes the raw material mixing, forming machines, and dryers. All three lines press the wet slurry flat, form the basic substrate by vacuum extraction of most of the water, and finish drying with gas-flame dryers. The dry end is everything after the dryer—various trimmings and coatings, stacking, palletizing, and shipping to the warehouse.

The hierarchy, starting at the rank and file, works its way up through an hourly supervisor for each “end” and each off-line operation; a salaried foreman for each production line; a general foreman; department managers; and, at the top, the plant manager. There are a few rank-and-file employees in issue, identified later, who earn a salary that does not vary for sick time off or hours worked in excess of 40 a week. Foremen on up are salaried, too. Vacation benefits are substantially more generous for salaried employees in general (whether 2(11) supervisors or not). Other benefits are equally available to employees in all departments.

The three production lines are all on the same pay scale. The job classifications are all “operator,” grades one through eight. Each step up the progression of that pay scale depends on mastery of a certain number of additional jobs or skills. The jobs and skills differ to an extent from line to line. For example, operation of the forming machine and dryer is two jobs in Commodity, but a single operation in Constellation, and some

superficially similar jobs take longer to learn in Constellation because it produces a higher quality board under stricter tolerances.

The Employer bought the plant from Conwed in August 1986. Conwed's production and maintenance employees were represented by a Paperworkers union. The Employer bargained with the Paperworkers for a while under order of the Board. USG Acoustical Products Co., 286 NLRB 1 (1987). The last Employer-Paperworkers contract expired in 1992. Relevant to this case, it covered heavy equipment operators, electricians, machinists, the control technician, and the burner technician. It excluded sampling employees, store room employees, lab employees (water testing), and quality control (now called quality inspectors). The Paperworkers disclaimed interest in 1997.⁴

The parties stipulated that hourly supervisors on up should be excluded from the unit as 2(11) supervisors. The stipulation was recorded without any accompanying factual basis, so I will accept it for purposes of this proceeding without indicating what if any weight it might be entitled to in any future contested proceeding. They also stipulated that temporary employees—those recruited from Manpower, Inc., and other seasonal employees called “vacation relief”—should be excluded from the

⁴ Upon due consideration, I find this bargaining history not probative on any of the issues raised in this case. The Employer originally succeeded to a bargaining unit established by an employer that produced different products under different management organization, and a union that is no longer involved. There were no multi-plant issues as far as appears. No evidence was presented as to whether the original unit was shaped by the parties' agreement or a certification based on community of interest analysis. Moreover, the Employer insisted that it did not know whether the Constellation department was included or excluded based on the illogical assertion that only the employees could tell that by whether or not they joined the Paperworkers. Accordingly, I do not find it material to any of the contested issues.

unit.⁵ The parties also stipulated that the plant engineer, plant electrical engineer, and project engineers should be excluded as professional employees, and the Petitioner has no interest in separately representing professional employees.

Multi-plant Unit

The Employer operates a “sister” ceiling panel production facility in Greenville, Mississippi, about 1100 miles from Cloquet. The Employer’s controller, Mike Shea, testified that the Employer coordinates production to the extent of answering orders through a central order processing office in Chicago with the least cost supplier, whether it is Cloquet or Greenville. Furthermore, the Employer strives to normalize operations at the two plants to make the product interchangeable.

About eight truckloads of product a week are exchanged between the plants. It is unclear how much that is in the grand scheme of things. The truck drivers work for a contractor, not the Employer. Shea further testified that he is in weekly contact with the controller in Greenville, and he, other accountants, and the office managers have visited the other plants in the effort to normalize accounting methods. Shea testified that no rank-and-file employees have ever transferred from one plant to the other. The engineering department manager testified that his burner technician was in Mississippi “recently” (not further defined) to train someone there.

⁵ The Employer also has some employees occasionally called “vacation relief” who are full-time employees of one department doing their “vacation relief” in another department—those are not excluded by the stipulation.

The hearing officer refused further evidence concerning the operations of the Greenville facility. In answer to the Employer's special appeal of that ruling, I requested that the Employer make a detailed offer of proof on the issue. The Employer offered to prove that the two plants have a similar but not identical supervisory structure, make similar products (although no Constellation is produced in Greenville) using similar methods of production, and have identical employment policies. The offer of proof also contains statements that "There's a significant amount of contact" between the plants and Cloquet employees have gone to Greenville and vice versa. The offer of proof is not specific as to who has contact with whom or who is going back and forth.

I find that the offer of proof is insufficient to justify taking further evidence on the issue and therefore affirm the hearing officer's ruling. There are at least four levels of supervision (not counting the hourly supervisors) in Cloquet before one would get to anyone with authority over both plants. Despite general references to personnel contact in the offer of proof, Shea testified that contact among anyone other than nonunit accountants and such is insubstantial, and no rank-and-file employees have ever permanently transferred from one plant to the other. Based on separate supervision, the lack of interchange among rank-and-file employees, and the distance between the plants, I find no basis for forcing these two plants into a single unit, no matter how similar the products and production methods are or how often the accountants talk to each other.

Constellation Department

The Employer demands separation of the Constellation department on community of interest grounds. It also argued to the hearing officer and in a special appeal that it was unreasonably denied the right to present more evidence, particularly about the job skills and functions of employees in the Commodity and Specialty departments. I deferred ruling on the special appeal until I could review the entire record in the case. Having done so, I reject the Employer's demand for an opportunity to present more evidence. It is not necessary to go into such detail as to teach the hearing officer how to operate all the machinery in the plant. The record is more than adequate to analyze the issue.

I recognize that there are distinctions. The record shows that while only open air and fork lift tracks separate the Commodity and Specialty lines, Constellation is enclosed and separated from the Specialty line by a lunchroom. The Commodity and Specialty operations areas are also hotter and dustier than the Constellation area. Transfers out of Constellation are rare because of the nicer conditions.

Constellation board has special sound absorption properties that make it the most expensive product sold from this plant. The processes are a little different—Constellation can only run a single 6-foot-wide board through its former and dryer, while Auratone moves in stacks of 12-foot-wide boards. In Constellation, forming and drying is controlled by a single operator, whereas in Commodity and Specialty those are two different jobs. In Commodity and Specialty, a number of graders eyeball the product for

quality, whereas in Constellation, each shift has a single dedicated grader who both eyeballs the product and performs tests with a light meter to ensure greater uniformity. Five maintenance mechanics are dedicated to the Constellation department and operate out of a shop in the Constellation department, separated from the other mechanics.

Constellation includes an operation called Illusion, which puts a detailed pattern on the board and/or its edge. The ingredients, listed above, differ. The best mineral wool (based on its compression factor) is used primarily in Constellation, although Auratone can use any mineral wool and thus uses the high-grade material if it is in excess supply. The “wet oatmeal” is in continuous process for Auratone, whereas it is made in discrete batches in Constellation. Coatings are measured to a stricter tolerance in Constellation. Production in Constellation does not depend on what is going on in the other two departments as they make distinct products for different customers.

On the other hand, the Harlen train drivers (warehouse department employees formally classified as “material handlers”), who move finished product from the production lines to warehouse, serve all three production lines. They drive a repeating route on which they circulate empty train cars all over the plant for loading by production employees, then come around again to pick up the full cars for transport to the warehouse. All paint and coatings are mixed, manufactured, and/or stored in a single storeroom located over the Specialty line. Specialty’s silent line employees share parking, plant access, and a lunch- and breakroom with the Constellation employees. The plant electricians serve all three lines without distinction. Constellation has from one

to three visits per day from an electrician to fix some kind of problem or breakdown. Although production is independent, the departments have to coordinate down days for maintenance so they aren't all drawing on the maintenance department at once. On these maintenance days, mechanics regularly assigned to the other departments help out in Constellation.

When the Constellation department started operations, the Employer considered it experimental and spent a considerable amount of time working out bugs before producing anything marketable. There are now about 60 employees in the department. In the experimental stage, the Employer transferred four Commodity operators into Constellation and hired the rest (the record doesn't say how many) from outside the plant. As production started, the Employer transferred three more operators each from Commodity and Specialty to take advantage of their experience forming board.

The Constellation department manager testified that after that initial start-up, the Employer went outside more for new employees because of the additional length of time it takes to train on Constellation jobs. Today, however, when Constellation has an opening, the first place the department manager looks for applicants is in the Human Resources department's file of employees already in the plant seeking transfers. The department manager identified six to eight transfers into Constellation from other departments within the last year, two the week before the hearing. Employees transferring in have to learn new operations, but they retain their former pay grade for a

year during which they are given an opportunity to test into a comparable skill level in Constellation.

A full crew of about 11 Constellation employees was temporarily transferred to a Specialty off line for two months in 1998 because orders for the Constellation product were too slow to keep them busy there. The Constellation department manager testified conclusionarily that Constellation takes no temporary transfers because an operator from Commodity or Specialty could not just step in and perform any of the Constellation jobs without extensive training. On the other hand, a Constellation relief supervisor testified that four to five Commodity operators were currently working on his shift on a temporary basis.

No matter how much the Employer tries to distinguish the technology and skills required, the production lines basically consist of the same operation—oatmeal in and ceiling panels out. While Constellation produces a nicer and more expensive product, there are also quality grades of product within the other lines. All the jobs require nothing but on-the-job training. Constellation jobs take a little longer to learn because the machines are a little more advanced technologically, but again, various operations all over the plant take different amounts of time to learn based on their complexity.

The Employer cites no case in which the Board has ever separated different production lines within a single plant in a case in which a petitioner sought a wall-to-wall unit. There is a substantial community of interest inherent in the situation, in that all the employees are rowing the same boat, so to speak. That is what makes a single plant unit

presumptively appropriate. The record is also replete with evidence of particular community of interest in this case, particularly sharing of warehouse functions and maintenance facilities, as well as transfers, both permanent and temporary. I conclude on the basis of the above that the Constellation department is part of the petitioned-for production and maintenance unit.

Maintenance and Engineering

The parties agreed that maintenance mechanics, vehicle mechanics, and janitors are appropriately in the unit. The Employer would distinguish the five maintenance mechanics who work only in Constellation and exclude them with the Constellation department. I reject that position on the basis of the Constellation department analysis above. The other maintenance mechanics are responsible for all non-electrical machine maintenance all over the building. The Employer has separate shop areas for its truck mechanics, for its electricians, for its machinists, for its Constellation maintenance mechanics, and for the other maintenance mechanics. Any maintenance employee who finds it handy to do so may occasionally use one of the other shops.

The parties agreed to exclude foremen and hourly supervisors as 2(11) supervisors and engineers as professionals. They also agreed to exclude CAD technicians, electrical designers, environmental technicians, senior engineering technicians, lab technicians, process control technicians, process control engineers, network specialists, “MBR 1” as technical employees. The issues are the electricians (including one aka burner technician), machinists, heavy equipment operators, and control technician. The

Employer contends those four classifications should be excluded on community of interest grounds.⁶

The electricians' general foreman is Bruce Johnson. Its plant master licensee is plant engineer Steve Povroznik. Only one other electrician (not identified) is licensed as high as journeyman status. Half of the current electricians transferred to the department from unspecified jobs elsewhere in the plant. The Employer contracts out any substantial electrical construction work. The only ongoing training any electrician receives would be on-the-job training supplied by the manufacturer of any new machinery installed.

One of the current electricians is also known as the burner tech. He is responsible for maintenance of all the natural gas flames in the plant, primarily in the dryers. The electrical component of this job is all low voltage, so it requires no license and has no training or educational prerequisites. The burner tech has a desk in the electrical shop, but spends most of his time out on the production lines responding to work orders or doing preventive maintenance. He works days, and also responds to a rare call after hours.

The Employer requires a year of technical school and gives a quiz for electricians. The Employer takes transfers into this department as long as the prospective transferee got the year of schooling on his or her own and passes the quiz. Electricians are

⁶ At the hearing, the Employer claimed they were all technicals and/or crafts, but on brief, only the control technician is allegedly a technical, and no craft distinctions are alleged. Petitioner denied interest in representing separate technical or craft units. I take the Employer's abandonment in its brief of its earlier claim that these positions are technical or crafts as a waiver, and even if I didn't, I would find no basis for those claims.

responsible for simple things like changing light bulbs on up to complex maintenance and trouble shooting on the equipment.

The Employer staffs electricians and maintenance mechanics on all operating shifts. Machinists and heavy equipment operators are normally assigned only on the day shift. Machinists work overtime only when they are in the middle of something at the end of the regular work day. Equipment operators work overtime basically only when it snows (they have to clear the access roads and parking lots).

Machinists work primarily in their shops and have little reason to work on the plant floor. They don't install or maintain the operating equipment. There are no educational or experiential prerequisites. All training is on the job. The only formal training would be provided by the manufacturer of a new piece of equipment related to its specific operation. Two of the three current machinists were previously maintenance mechanics and the other transferred from a production job. The only job qualification demanded by the Employer is "mechanical aptitude."

Heavy equipment operators work mainly outside. Besides snow removal, they are responsible for driving waste to the dump, grounds maintenance, and maintenance of the plant's rail spur. Driving to the dump requires at least some of the equipment operators to obtain a Class B commercial drivers' license because of the size of the truck in use for that operation. Besides the electricians described above, these are the only employees in the plant that require any kind of licensure to perform their jobs. The entry level equipment operator would be known as a "yard operator." All three current equipment

operators are at the top of the pay scale and qualified for any job within the department's jurisdiction.

The control technician is responsible for calibrating all of the Employer's machinery and setting its programmable logic controllers (PLC). The PLC system is basically the computerized organization of the order in which the various mechanized processes operate and integrate. The only other individual in the plant currently qualified to step in for the control technician is the process control engineer, a stipulated technical. The control technician works on the production line machinery, but his only real interaction with production employees would be incidental to his unique work; for example, telling an operator to turn off a machine before he sticks his hands in it.

The current control technician was a plant electrician before this job was created. He reports to an hourly supervisor shared by other electricians. His only training for the calibration and PLC work was provided by the manufacturer of the equipment he utilizes on the job, but the Employer claims it will require an Associate's Degree or equivalent technical school training for any replacement. On cross-examination, however, the Employer's witness on that issue admitted that if they found someone within the plant who had the same apparent aptitude and attitude as the incumbent had when they tapped him for this job, they would waive the degree requirement and train someone. I conclude that lacking any degree requirement or formal training, the position of control technician is not currently "technical" within the meaning of the Act, and the Employer's

hypothetical, contemplated changes in its future treatment of the job do not require its exclusion from the unit on technical grounds now.

On community of interest grounds, the control technician, electricians (including the burner technician), machinists, and heavy equipment operators are clearly appropriately included in the unit. They all provide maintenance service integral and crucial to the plant's operation. I find no authority for the Employer's request to exclude some maintenance employees from a petitioned-for production and maintenance unit.

Office Department Issues

The Employer's storeroom is staffed by one supervisor, one receiving clerk, and two storeroom clerks. These employees stock and distribute all the plants' supplies, including parts and belts for the machines, office supplies, light bulbs, and toilet paper. Office supplies constitute about 5 percent of the inventory; the rest is production and maintenance supplies.

The receiving clerk started with Conwed many years ago working in the power plant, which the Employer no longer operates. He got a salary in that job and remains salaried today, although the amount thereof is not specified. One of the storeroom clerks started with the Employer in the Constellation department working on receipt of raw materials, while the other was hired into the storeroom.

All three clerks work the counter dealing with employees who come in with a supply requisition and use fork lifts and hand trucks to stock the shelves and retrieve the goods. They sub for each other, but when all three are present, they tend to specialize in

certain functions. One of the storeroom clerks mans the counter most of the time dealing with employees and supervisors alike who come to the counter to get something. The other spends most of his time in the stock room loading and unloading the shelves, including a couple hours a day on the fork lift. The receiving clerk's unique duties include opening all incoming packages, accounting for their contents, and keeping the inventory tracked on computer. All three jobs have no educational or experiential prerequisites, all are learned solely on the job.

On the Employer's organizational chart, the storeroom supervisor reports to the plant controller along with all of the office and accounting departments. The storeroom is located next to the main offices. Production and maintenance employees are expected to go to the storeroom to make their requisitions, whereas the storeroom employees deliver to the office.

The Employer proposed to exclude all of the storeroom employees. Petitioner agreed at the hearing to exclude the receiving clerk, apparently on its now-abandoned request to exclude all salaried personnel, but wanted to include the other two storeroom clerks. The Employer also emphasized a belief that all three jobs should be in or out together. In the briefs, the Employer claims all three positions should be excluded as office clericals, and Petitioner argues they should all three be in the unit (even in spite of the receiving clerk's salary, which it describes as an artifact of Conwed's former ownership).

The Employer cites one case in support of its position, Offshore Shipbuilding, 274 NLRB 539 (1985). This is a post-election case, it doesn't say whether it is reviewing a stipulated or directed election, and the only unit description is the summary statement that the petition was "for a unit of production and maintenance employees." Thus, the decision does not make clear whether it is based solely on community of interest analysis or comparison of the position to a job category consciously placed in or out of the unit. The ALJ sustained a challenge to the parts department clerk, stating only that the clerk "checks out parts to employees and travels outside the yard; he does not work with the tools; he wears a hardhat of supervisors' colors; and his skills are unrelated to those of the other unit employees."

The Employer's organizational chart and the storeroom's proximity to the main offices weigh marginally in favor of the Employer's position. The fact that there are some distinctions, however, is not sufficient to require the storeroom employees' separation from the petitioned-for unit. These clerks appear to do little if any secretarial-type, office clerical work. They also have direct supervision apart from the other office employees. Two of the three employees have production and maintenance histories. Ninety-five percent of their supplies are production and maintenance related. On balance, I conclude they share a community of interest with the production and maintenance employees and belong in the unit. See, e.g., Nor-Cal Ready Mix, Inc., 327 NLRB No. 187 (Mar. 30, 1999); Libby Glass Div., 211 NLRB 939, 941 (1974); Pineville

Kraft Corp., 173 NLRB 863, 864 (1968); United States Gypsum Co., 148 NLRB 1640, 1647 (1964).

Quality Department Issues

The quality department is set up essentially to inspect the product, deal with customer complaints, set corrective action plans in response thereto, and maintain the Employer's ISO 9002 certification. The quality department includes two sample technicians. They are responsible for answering requests for product samples. They obtain finished boards from the warehouse or direct from a production line or even from the scrap heap, cut them down to 6x12-inch size, fix any blemishes, and package and ship the samples. One of the current sample techs was a production employee moved to this job because of work-restricting injury. They work in their own office near the main plant offices and lunch in the office lunch room. They report to Sample Supervisor Darv Morrow.

There are five quality technicians. Three of them work primarily on Constellation products (Lind, Ulvi, and Garsow). The other two work primarily on Auratone products (Stonemark and Thro). None of the five jobs have any educational or experiential prerequisites, and all job training and knowledge has been acquired on the job. Their only ongoing training is conducted by the manufacturers of their testing equipment.

The two Auratone techs work mainly days, with little overtime or shift work. They spend 75 percent of their time in an enclosed laboratory doing tests on sample product. The rest of their time is spent in the plant collecting the samples. They test

physical strength of the product, acoustical properties, and combustion properties. They use bunsen burners, sound testing equipment, and an environmental aging chamber (“isolarium”), all of which operations they learned on the job. They report to Quality Supervisor Cockburn. Both were previously employed as quality control inspectors. Stonemark started as a production operator under Conwed. They earn \$14.75 an hour.

The three Constellation techs rotate, one on each shift. They spend about 25 percent of their time in the lab with the Auratone techs doing similar tests, and they help doing the tests on Auratone product when they run out of Constellation samples. They report to Quality Supervisor Ron Nyholm. Two of the three were previously Constellation operators, the other was hired from outside the plant.

Besides the destructive testing described above, the Constellation techs are responsible for surface inspection of the Constellation product, whereas any number of operators do grading on the Auratone products. This is because the Employer has higher standards for color, surface texture, and uniformity for the Constellation product, and having a single grader contributes to uniformity in applying those standards. When any of the three is absent from work, the other two work 12-hour shifts to provide full coverage.

If the five quality techs find anything off standard, they report it to a supervisor over the line that produced the product. They make recommendations regarding the problem based on their extensive knowledge of the ingredients and properties of the product. For example, if they find excessive smoke in a combustion test, they are likely

to know from the recipe which ingredients contribute to smoke and will recommend those be checked out. Fixing the problem is up to the production line supervisor.

There is one ISO deputy, John Schilla. The International Standards Organization offers certification for compliance with its established standards for operating procedures and quality control. Schilla is responsible for monitoring production processes and doing all the paperwork involved in continuing certification. This consists basically of self-auditing of product specifications, product tolerances, and quality checking.

Schilla reports to Quality Supervisor Nyholm. Schilla has his own office including files and a personal computer. He regularly spends two hours a day assisting Stonemark and Thro in the quality lab and, when his ISO work is slow, spends up to four hours on that testing. The only job prerequisite is familiarity with Microsoft Word and Excel programs. He collects and records data on all facets of production, mainly defect rates. If he finds anything off standard, he, like the other Quality techs, reports it to the relevant production supervisor, who is responsible for the remedy. Schilla was an operator on the Specialty line when the ISO deputy job was created about two years ago.

Neither the ISO deputy nor the quality technicians exercise any discretion in setting the standards for which they test. They are basically responsible for collecting data, doing the tests, and recording the results.

The Board generally includes quality control inspectors in production and maintenance units. Lundy Packing Co., 314 NLRB 1042 (1994). A petitioner can get them out merely by showing that inspectors lack an “overwhelming” community of

interest with production employees. Id. I find no persuasive authority, however, for the Employer's attempt to force them out of a production and maintenance unit in which a petitioner seeks to represent them.

The Employer cites Beatrice Foods Co., 222 NLRB 883 (1976), in which the Board sustained challenges to the ballots of two product testers. In a summary footnote, the Board said the testers lacked a community of interest with production employees because "they are separately located, under separate supervision, and do not have regular contact with production employees." The only further light on the facts is shed in a dissenting opinion, which notes that the lab was a "separate department," but still in the same building as the production lines, and that lab employees had no contact with production employees because their supervisor brought them all their samples.

I find a substantial community of interest between the Employer's inspectors and the production employees. The inspectors spend about one-fourth of their time mingling with production employees when the inspectors are obtaining samples, their function is integral to the production process, their pay is similar and benefits identical to the production employees, and three of the five started in production jobs. See W.R. Grace & Co., 202 NLRB 788 (1973) (separate supervision, better education, segregation of work area and functions insufficient to require separation of inspectors from p&m unit).

The ISO deputy is a little further distinguished, but I include him also on the ground that he works closely with the inspectors and spends one-fourth or more of his time actually assisting them. Finally, the sample techs share departmental supervision

with the inspectors and ISO deputy, and their interests are more closely aligned with production employees than any other group. If left out, they would be an isolated, fragmented residual unit, which is not consistent with Board law.

Relief Supervisors

The parties dispute the unit placement of “relief supervisors.” Most of the people designated as such are usually hourly employees who substitute for their hourly supervisor when the hourly supervisor is sick or on vacation. Most of the hourly supervisors get five weeks of vacation a year, so a typical relief supervisor can expect to act as hourly supervisor about five weeks a year plus their hourly supervisor’s sick days.

A few relief supervisors are currently acting as supervisor for an indefinite period on an added shift. One of those situations has lasted for two years (Paulson). One started June 1 (Clark). One is just gearing up (Johnson). The Employer indicated that it has no current plans either to eliminate the extra shifts or make these supervisors’ positions permanent.

A few relief supervisors occasionally temporarily bump all the way up to relief foreman when both the hourly supervisor and the regular foreman are gone at the same time. The relief supervisors who testified about such experience said it was rare. The most recent said that occurred to him about a week in 1998, and about two weeks so far this year. This was also the relief supervisor, Paulson, who has been acting as hourly supervisor for two years straight.

Relief supervisors get paid about 10 percent more while performing as relief supervisor. Those few who have moved up all the way to relief foreman in the absence of both the hourly supervisor and the regular foreman got an additional 10 percent pay boost for that service. There is no evidence of what hourly supervisors or foremen are paid. Relief supervisors receive no other benefits or emoluments of office that distinguish them from rank-and-file employees.

Section 2(11) of the Act defines a supervisor as

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

“The Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. . . . The burden of proving supervisory status rests on the party contending that such status exists.”

Children’s Farm Home, 321 NLRB 61, 65 (1997). While the enumerated powers of Section 2(11) are listed in the disjunctive and possession or exercise of any one of them suffices to make an individual a supervisor, the requirement of independent judgment is stated in the conjunctive with all that precedes it.

[A]bsent detailed, specific evidence of independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. . . . In determining whether ‘direction’ in any particular case is ‘responsible,’ the focus is on whether the

alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs. . . . Authority to effectively recommend ‘generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed.

Id. (citations omitted).

Petitioner offered an exhibit it represented as a document distributed by the Employer to relief supervisors shortly after organizing activity started. It is a typed piece of paper with no Employer insignia or date on it, designated Pet. Ex. 7. It reads:

Supervisory Responsibility

Listed below is a list of our expectations and the designated responsibilities of hourly supervisors and of the relief supervisors when performing the duties of an hourly supervisor.

- Ensure the safety of all employee, including enforcing safety rules
- Have authority to direct the workforce
- Have authority to recommend promotion, transfer, and discharge the workforce
- Refrain from activity on behalf of any union while performing the duties of a relief supervisor
- Perform all duties free from any forms of unlawful discrimination
- Authority to assign employees for training purposes
- Authority to address employee complaints

Some of the relief supervisors who testified were not asked about the document.

Some who were asked about it said they never saw it before, and the rest admitted seeing it sometime, but disclaimed any memory of the circumstances of its distribution. Of those who were asked, they testified uniformly that the document represented nothing

new, no substantial change in their duties or responsibilities. The Employer offered no testimony about the preparation of the document or its intended import from anyone other than the disputed relief supervisors.

Assuming this document was an authoritative pronouncement of the Employer, I find it does not establish supervisory status among the relief supervisors. Nor does the conclusionary testimony that relief supervisors possess the same authority as hourly supervisors when they are acting in that capacity. “The question whether particular individuals in a given case are supervisors within the meaning of Section 2(11) of the Act must be resolved upon examination of all the evidence in the case. Conclusory statements . . . do not establish supervisory authority. Such expressions are words of art reflecting legal conclusions, but they are not evidence which assists in the resolution of disputed supervisory authority.” Volt Information Sciences, 274 NLRB 308, 330 (1985). Upon examination of the entire record concerning relief supervisors’ actual authority and actions, I find the Employer failed to carry its burden of proving them to be supervisors within the meaning of the Act.

First, “an employee who substitutes for a supervisor may be deemed a supervisor only if that individual’s exercise of supervisory authority is both regular and substantial.” Hexacomb Corp., 313 NLRB 983, 984 (1994). Substituting for a supervisor only when the full-time supervisor is sick or on vacation is not “regular.” Id. Thus, the Employer’s relief supervisors who act as hourly supervisors or foremen when the regular hourly supervisors are sick or on vacation are not disqualified from the unit.

I have my doubts as to whether even the relief supervisors who are acting as hourly supervisors on an indefinite basis to cover newly added shifts are “regular” within the meaning of the Board cases since their term is indefinite, even when some such terms have extended for a considerable period. Latas De Aluminio Reynolds, Inc., 276 NLRB 1313 (1985) (substitution for four to five months immediately before election does not make substitute a 2(11) supervisor when substitution was for vacation and training of regular supervisor). However, I need not decide that because I conclude, after examining all of the evidence, that even when they are acting as hourly supervisors, the relief supervisors do not possess or exercise real statutory authority.

There is no evidence that there has ever been a layoff or recall for economic reasons, nor any evidence that relief supervisors would have a role in those decisions if made. The only evidence regarding transfers is a couple of statements to the effect that relief supervisors are asked if they think they can spare the employee seeking the transfer. That is obviously at best a small piece of information that may be utilized by a higher-up actually making the transfer decision, not an effective recommendation.

Regarding adjustment of grievances, the Employer provides a grievance procedure that begins with an instruction to employees to talk about their problems with their immediate supervisor, meaning the hourly or relief supervisor on duty at the time. An employee dissatisfied with any resolution offered within this grievance procedure can keep taking their concern up the chain of command all the way to the plant manager. The

relief supervisors who were asked about their involvement in this process either said they have never had a complaint, or they said they try to resolve it as best they can.

The only concrete examples were, first, from a maintenance mechanic relief supervisor who said once an employee complained about having to work with another named employee, and the relief supervisor thereafter scheduled them to work as far apart as he could. I will discuss relief supervisors' role in making work assignments as it impacts their Section 2(11) status below, but I don't consider this isolated example sufficient to prove authority to adjust grievances independently. Second, one of the production line relief foremen said an employee once complained to him about dust, and he wrote up a work order for the maintenance department to come and look at the dust collector. The evidence also indicates, however, that any rank-and-file employee who finds a maintenance problem can write up such a work order.

I conclude that relief supervisors demonstrate no authority to answer grievances by adjusting any substantial term or condition of employment, or even of binding the Employer by their decisions. Therefore, I find no authority to adjust grievances.

The Employer offered conclusionary evidence that relief supervisors are authorized to discipline other employees as they see fit by giving them oral warnings, written warnings, or suspensions, but that they do not have authority to discharge another employee.⁷ No example was offered, however, of a relief supervisor actually

⁷ I note this testimonial contradiction with Pet. Ex. 7's supposed delegation of authority to discharge employees among the other foundational difficulties I noted earlier in regard to whether that document indicates a delegation of supervisory authority.

independently disciplining anyone any further than what they called an oral warning, which in every instance described was merely a private direction to, for example, get back to work or stop doing something the relief supervisor didn't like.

The Employer issues employee "contact" forms, which contain records of disciplinary actions. The majority of those that were offered into evidence are for absenteeism or tardiness. On that question, the Employer has an established policy requiring progressive discipline based on the number of points accumulated for violations, depending on whether the absence or instance of tardiness was excused or unexcused. Although relief supervisors routinely sign the forms, they all disclaimed having any input into whether an excuse offered by an employee qualified to make an absence or tardy officially "excused."⁸

I also note regarding the contact forms that several relief supervisors testified that they sign these whenever the forms come around and they are on duty as relief supervisor, whether they witnessed or reported or investigated the incident memorialized, or even had anything to do with the issue before the day they were asked to sign. Moreover, there is no evidence that accumulation of these contact forms has any

⁸ The Employer claims in its brief (Br 10) that Paulson exercises judgment in deciding whether an absence is excused or unexcused. The actual testimony is affirmative responses to two leading questions (does the foreman sometimes ask for your recommendation on whether an absence should be excused? and have they followed your recommendation?) without further elaboration or examples. That testimony falls woefully short of establishing independent judgment or effective recommendation. Custom Mattress Mfg., Inc., 327 NLRB No. 30 (Oct. 30, 1998).

The Employer also claims that Johnson testified she has been instructed to evaluate excuses (Br 16). That testimony, however, follows the Employer's question to Johnson as to whether she will, now that she is indefinitely relief supervisor, step up to relief foreman when the foreman is absent. Johnson testified that when she is acting as relief foreman, she will be expected to decide whether an absence is excused or not. Even if that testimony establishes independent judgment, there is no basis on the

independent consequence on employees' continued tenure or any other specific term or condition of employment. Accordingly, signing these forms as "Supervisor" is meaningless.

There is no evidence that an employee has ever done anything bad enough to get suspended or discharged. Accordingly, all the evidence of disciplinary authority beyond issuance of a written contact form is hypothetical. Even so limited, every relief supervisor who was asked whether they expected that their hypothetical authority to discipline would be reviewed by a foreman said yes, as long as it was anything beyond a private, oral instruction to an employee to shape up, in which case they wouldn't tell their foreman it happened or otherwise record it anyway.

The hypothetical highlights include Specialty off-line relief supervisor Heikkila's testimony that she was once told to refer any disciplinary issues that arose on the day shift to her foreman, and if she caught someone fighting or drinking at night when the foremen weren't around, she should send them home. Commodity relief foreman Himango testified that once, about eight to ten years ago, he was told that if someone refuses to take an order from him, he is to send the person home and tell them to report to the foreman the next day and explain why they couldn't follow directions.

Commodity relief supervisor Johnson testified purely based on her own opinion, rather than in reference to any specific instructions, that if she saw an employee breaking the rules or doing anything wrong, she would tell them to stop. If the situation required

record for finding that Johnson will act as relief foreman regularly and substantially enough to become a supervisor. See Hexacomb Corp., 313 NLRB 983, 984 (1994).

anything more serious than that, she would go get a foreman, unless it was a black-and-white situation like smelling alcohol on an employee's breath, in which case she would send the person home. Constellation relief foreman Clark conclusionarily believes he has authority to discipline employees. When asked how he knew that, he responded not with a direct answer, but with a hypothetical—he merely opined that if he saw someone driving a fork lift erratically, he would write them up. He acknowledged that he has never had occasion to write anyone up. He also said if he observed a safety violation while relief supervising, he would “verbally warn” the employee to stop it; and if he saw a serious problem like an employee suspected of being drunk, he would seek out a foreman, and if he couldn't find one, he would send the employee to the office to wait for a foreman.

Constellation relief supervisor Reynolds also testified that he believes he has authority to discipline employees by write-up or suspension. First, he testified that he had once received instructions to write people up if he caught them sleeping, not doing the job, or away from their machine, but then equivocated to say he didn't remember whether the foreman really said report that kind of thing to him. In any event, Reynolds has never issued a write-up or a suspension. He did testify that he encountered one situation as relief supervisor he felt warranted a write-up, when an employee refused to carry out one of his orders. Instead of independently writing the employee up, however, Reynolds searched for his foreman for an hour before he merely reported the incident,

leaving the ultimate decision up to the foreman. The foreman handled it simply by telling the employee to follow orders, not by issuing any kind of write-up.

Maintenance mechanic relief supervisor Houck said he has only encountered one disciplinary situation in his tenure. He once reported another employee for not working up to accepted standards, but has no idea what the foreman did with his report. He opined that he believes the foreman is keeping mental note of this report for future reference. Maintenance mechanic relief supervisor Demenge said he understands that if he witnesses any disciplinary problem, he is supposed to report it to the foreman, although he cannot recall any specific instructions on this or any other aspect of his authority.

No warehouse relief supervisors testified. Instead, the Employer relied for that department on warehouse foreman Manderfeld, who said conclusionarily that his relief supervisors have the authority to discipline employees, although they have never faced a situation requiring it. When asked if their disciplinary authority has ever been explained to the relief supervisors, Manderfeld answered, “They know that, they’re aware of it.”

The record belies the exercise of independent judgment or issuance of effective recommendations. Authority to send someone home in response to an egregious violation of acceptable standards pending a final decision by a higher-up is not Section 2(11) discipline. Lakeview Health Center, 308 NLRB 75, 78 (1992); Foote’s Dixie Dandy, 223 NLRB 1363, 1364 (1976). Nor is issuance of write-ups that have no substantial, independent effect on an employee’s job status. Children’s Farm Home, 324

NLRB 61, 61 (1997). I find that relief foremen are responsible at most for reporting disciplinary infractions for their foremen or someone else to handle, or for plugging absentee and tardiness violations into the Employer's established disciplinary formula, whether or not the relief supervisors even witnessed the incident.

No witness claimed that relief supervisors have authority to independently hire an applicant. Specialty relief supervisor Paulson said he has no involvement in hiring, but he is asked whether employees should be kept on after their first 60 days. He has never recommended against retention of an employee, opining that "they all worked out. . . . I figured it's a good idea to hire him, . . . I mean that they hired them, that I approved"

I interpret that to mean that Paulson merely rubberstamps the prior decision to hire.

Commodity relief supervisor Johnson said her foreman has asked her on just one occasion if a Manpower employee was good enough to keep, and she said yes. The person was thereafter hired on full time. Besides being an isolated event, that testimony does not belie independent investigation by whoever solicited Johnson's opinion.

Maintenance mechanic relief supervisor Houck has sat in on interviews for vacation relief employees with a foreman and an hourly supervisor also present each time. All three asked questions of the applicant and filled out an evaluation form, including a recommendation. Houck recalled three specific interviews. He recommended hiring a production employee who applied to do vacation relief in maintenance, and that happened; he recommended two others for hiring, one of whom was not hired and one to whom he doesn't know what happened. I can only conclude

from that testimony that Houck's evaluation was not an effective recommendation, independent of some higher supervisor's decision.

Regarding authority to promote or reward, in all departments, employees move up the pay scale by demonstrating proficiency in different jobs—the more jobs one qualifies to perform, the higher up the scale one progresses. The Employer keeps forms noting when employees qualify for a promotion by demonstrating proficiency on a new machine or a new task. Employees demonstrate their proficiency after a period of on-the-job training. Training basically consists of a read through the manual for a particular machine, then two or three weeks watching another operator perform the job. As with the disciplinary contact form, if someone's promotion form comes around the day a relief supervisor is on duty, the relief supervisor signs it whether or not they had anything to do with the evaluation or recommendation that prompted it.

Several relief supervisors testified that their foremen ask them how the trainees did and whether they had successfully learned the new job. They also uniformly testified, however, that the foremen also independently test and evaluate completion of a training run, and also ask the operator who did the training (which could be anyone on the line) how the trainee did. Constellation relief supervisor Reynolds, when asked for an opinion about whether another employee deserved a promotion, told "the supervisor" (not otherwise identified) to test the employee himself because he, Reynolds, couldn't tell the supervisor what to do. Maintenance mechanic relief supervisor Houck said his foreman occasionally asks how new employees are doing, but he has no idea how his answer

affects their pay or whether his opinions coincide with any specific pay rate decisions, and he does not sign promotion forms.

The Employer argues that no evidence was presented of a relief supervisor approving a trainee's performance who then fails to get a raise. On the contrary, Specialty off-line relief foreman Heikkila said she recently recommended an employee for qualification on sprayers, and her foreman sent it back to her with an instruction that the employee demonstrated competence on only one of the three required sprayers. In addition, there is no evidence that a relief supervisor has ever reported that a trainee failed to learn a job. Several of them opined that the jobs are so easy to learn that they can't conceive of anyone failing.

Relief supervisors sometimes initiate a request for certification on a new job on behalf of a trainee. The employees themselves, however, can also initiate the process any time they feel they are ready. There is no evidence relief supervisors control training opportunities so as to bottleneck employees' chances at an upgrade. Both Specialty off-line relief supervisor Heikkila and Commodity relief supervisor Himango said their foremen tell them whom to train on what and when either by direct instruction or by keeping a rotation list. Constellation department manager Bakken elaborated on the rotation in his department—when an employee's name comes to the top of the list, they get to train on something they don't already know. If they fail two evaluations on the new machine, their name goes back to the bottom of the list without prejudice to trying the same thing when their name comes up again.

Specialty relief supervisor Paulson also administers a fork lift test. There is no evidence on who if anyone else can administer this test. Passing it and a written test makes a skill qualification on fork lift operation that mounts toward a promotion. The test consists basically of a 15-minute driving test and obstacle course. The tester gives the applicant a score of 1, poor, to 4, excellent, in such areas as—slowed down at intersections; sounded horn at intersections; lifted load properly; lowered load smooth and slow. The relief supervisor has no input into what score it takes to pass. An applicant can take the test as many times and as often as they want, if they don't pass. Paulson has never given anyone less than a passing score. Paulson tested his own foreman and gave him a score of 100 percent.

This evidence does not establish statutory authority to promote or reward. At most, relief supervisors offer an opinion of how other employees are doing, an opinion that is also routinely sought out from other nonsupervisory co-workers. The promotion decisions themselves are made by higher-ups based on independent investigation, of which the relief supervisors' opinion is only a part. In particular, with regard to Paulson's fork lift testing, see Hogan Mfg., 305 NLRB 806 (1991).

The last area of potential supervisory authority concerns assigning and directing work. The Employer points out that some relief supervisors decide on a daily basis who will be assigned to which jobs. I find none of the relief supervisors who carried that mantle established that these assignments involved independent discretion or responsible judgments. On the contrary, such decisions are routine. On the production lines,

openings are determined by the production schedule, by breakdowns, and by “clean-up lists” of make work prepared by foremen or higher-ups. With that established field of openings, relief supervisors are expected to rotate all jobs within each employee’s qualifications in order to keep everyone sharp. In maintenance, the employees’ assignments are directed by their long experience and development of areas of expertise. In the warehouse, relief supervisors are entitled to assign jobs to various individuals, but the employees are also then free to trade jobs among themselves.

There is testimony that overtime assignments can be mandatory, but no evidence a relief supervisor has ever made a responsible decision to assign overtime work. On the contrary, in practice, overtime assignments are made by following rotation lists or by seeking volunteers, and employees are free to recruit their own substitutes even if directed to work overtime.

Regarding requests for time off, the testimony is uniform that relief supervisors grant such requests only when there is no real decision to make, like when the employee is obviously sick or has a doctor’s appointment. If there is any question about the legitimacy of the excuse or about the employee’s expendability, the relief supervisors direct such requests to higher-ups.

Regarding requests for vacations, everyone who testified said there is no judgment involved—the Employer limits how many people can be on vacation at one time, and as long as a vacation request is consistent with that limit, it is granted. In all instances described in which more employees sought vacations than the Employer’s established

policies allowed, the relief supervisors either told the employees to work out the conflicts themselves or referred the matter up the chain of command.

In certain circumstances, relief supervisors decide how many employees it takes to do a job or pick one person over another to do a certain job. I find these decisions are merely routine. See Vapor Corp., 242 NLRB 776, 779, 782-783 (1979). The Employer has not proved that any work directions or assignments require independent judgment or that the relief supervisors are in any way accountable or responsible for the results.

The Employer sought, at the hearing and in a special appeal, to call all of its relief supervisors to testify about their authority. By the end of the hearing, the Employer identified over 40 relief supervisors. The hearing officer restricted the testimony to two relief supervisors per department and one overall witness who could testify about relief supervisors' common characteristics.

For its overall witness, the Employer presented Ken Brule, currently Specialty department manager. He was Constellation department manager from 1993 to 1995, and engineering department manager from 1995 to 1997. The Employer claims that makes him the best qualified to talk about all the different departments' relief supervisors, but his testimony consisted primarily of repetitious disclaimers of knowledge of any particular relief supervisor's authority outside of the Specialty department.

The Employer also presented Brule with a number of evaluations and disciplinary reports that had relief supervisors' signatures on them and went through the list of relief supervisors' names asking questions about their authority. Beyond authenticating the

documents, Brule disclaimed knowledge of the relief supervisors' specific participation in any of the decisions reviewed or their specific authorities. Brule testified that there is only one common theme—relief supervisors when acting in that capacity have the same authority as the hourly supervisors for whom they are acting. Otherwise, he said any relief supervisor's specific authority in any area depended on their own individual initiative and the idiosyncrasies of their foreman.

The Employer argues that Brule's testimony proves its point that it must have the opportunity to call and examine all 40-plus relief supervisors to testify on their own behalf. On the contrary, I find the Employer's inability to present a witness superior in the hierarchy to the relief supervisors to testify about their authority cuts against finding them supervisors. Relief supervisors can't make themselves supervisors within the meaning of the Act. Therefore, if no one higher up knows the extent of their authority, I would conclude that they must never have been delegated supervisory authority.

The Employer also argues that the record's demonstration that some relief supervisors exercise their authority to a greater or lesser extent than others means it must be allowed to call them all. I agree that some relief supervisors make decisions that others decline to make, but not in any material respect. Rather, the record shows that some relief supervisors decline or have never been asked to make even the routine decisions, like whether an obviously ill employee can go home, that other relief supervisors do make.

The Employer makes no offer to prove that calling any more relief supervisors would produce one who has actually ever made a responsible, independent judgment in a Section 2(11) area. In fact, the Employer has already called two relief supervisors it conceded it had not even interviewed before the hearing, and thus necessarily concedes it had no basis for believing that they would establish supervisory status. Since the Employer could not find a responsible exercise of independent judgment in any of the supervisory indicia with the witnesses it did call, I see no basis for prolonging the hearing on an obvious fishing expedition.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production, maintenance, and warehouse employees, storeroom employees, sample technicians, quality technicians, ISO deputy, and “relief supervisors” employed by the Employer at its Cloquet, Minnesota facility; excluding temporary employees, “vacation relief” employees who have no other regular assignment, office clerical employees, salespersons, professional employees (including plant engineers, plant electrical engineers, and project engineers) and technical employees (including CAD technicians, electrical designers, environmental technicians, senior engineering technicians, lab technicians, process control technicians, process control engineers, network specialists, and MBR 1), guards and supervisors, as defined in the Act.

DIRECTION OF ELECTION⁹

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹⁰

⁹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 21, 1999**.

¹⁰ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Drivers Union Local #346, a/w International Brotherhood of Teamsters.

Dated at Minneapolis, Minnesota, this 7th day of December, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

Index # 177-3901

177-8500-8501-2000
177-8500-8501-4000
177-8500-8520-2400
177-8500-8560-6000
177-9300-9375
440-1720-0133
440-1760-1580
440-3300-3375-0100

Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **December 14, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.